

01  
02  
03  
04  
05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 PATRICIA ANN GIULIANO, ) CASE NO. C09-0100-CRD  
08 Plaintiff, )  
09 v. ) ORDER AFFIRMING  
10 MICHAEL J. ASTRUE, ) COMMISSIONER  
Commissioner of Social Security, )  
11 Defendant. )  
12 \_\_\_\_\_ )

13 The Court has reviewed the entire record, including the Administrative Record, the  
14 memoranda of the parties, the Report and Recommendation of United States Magistrate Judge  
15 Mary Alice Theiler, Plaintiff's opposition to the Report and Recommendation, and Defendant's  
16 response. For the foregoing reasons, the Court adopts the Report and Recommendation in its  
17 entirety and affirms the Commissioner's decision.

18 In her opposition to the Report and Recommendation, Plaintiff contends that both the  
19 ALJ and the Magistrate Judge applied an incorrect legal standard at step two of the disability  
20 analysis. Plaintiff argues that if the correct standard were applied at step two, her depression  
21 and anxiety would be found legally severe impairments. Specifically, Plaintiff points to the  
22 ALJ's analysis regarding the medical expert, who believed Plaintiff had moderate social

01 limitations. The ALJ disagreed with the medical expert, finding:

02 Specifically, according to the state's evaluation, the [plaintiff's] symptoms were  
03 not serious enough to rise to the degree of limitation required to find a severe  
04 impairment. Accordingly, I have not found a basis for the moderate social  
05 limitations assessed by the medical expert. The treatment records have not  
06 indicated that the [plaintiff's] mental impairments have created a moderately  
07 severe limitation in maintaining social functioning. More significantly, the  
08 [plaintiff] has managed in the past to work with her impairments and has  
09 functioned relatively well, which would not warrant a moderate limitation in her  
10 social functioning.

07 AR 31.

08 In support of the above portion of the ALJ's decision, Magistrate Judge Theiler notes,  
09 "A diagnosis alone is not sufficient to establish a severe impairment. Instead, a claimant must  
10 show that her medically determinable impairments are severe. 20 C.F.R. § 404.1520(c). In  
11 this case, Plaintiff has not demonstrated the existence of a mental impairment significantly  
12 limiting her ability to perform basic work activities." Report and Recommendation at 7.

13 Plaintiff argues the ALJ, and consequently the Report and Recommendation, apply an  
14 incorrect legal standard by requiring more than a "moderately severe limitation in maintaining  
15 social functioning" when the correct threshold at step two is lower. Plaintiff argues that  
16 "Respectfully, there is no requirement that there be more than 'moderate limitations' in order  
17 for a finding of legal severity; the standard is more than a 'minimal effect' on claimant's ability  
18 to work..." Plaintiff's Objections at 2-3. Plaintiff also correctly sets forth the applicable  
19 legal standard, however, the Court finds neither the ALJ nor the Magistrate Judge applied the  
20 "incorrect" legal standard as Plaintiff presents it.

21 The ALJ analyzed the medical expert's opinion that Plaintiff has a "moderately severe  
22 social limitation," however, the ALJ did not use "moderate severity" as the legal standard at

step two. Instead, the ALJ discussed why he disagreed with the medical expert's opinion of a "moderately severe limitation in maintaining social functioning" concluding that Plaintiff does not have a severe impairment at step two of the disability analysis. Thus, the ALJ did not hold "moderate severity" out as the disability standard at step two, but applied the correct legal standard, which, as noted by Magistrate Judge Theiler, requires that:

At step two, plaintiff must make a threshold showing that her medically determinable impairments significantly limit her ability to perform basic work activities. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§ 404.1520(c), 416.920(c). "Basic work activities" refers to "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§ 404.1521(b), 416.921(b). "An impairment or combination of impairments can be found 'not severe' only if the evidence establishes a slight abnormality that has 'no more than a minimal effect on an individual's ability to work.'" *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (quoting Social Security Ruling (SSR) 85-28). "[T]he step two inquiry is a *de minimis* screening device to dispose of groundless claims." (Id.) (citing *Bowen*, 482 U.S. at 153-54).

Report and Recommendation at 4.

Accordingly, the Court finds the Report and Recommendation does not apply an erroneous legal standard, and is not otherwise in error by recommending affirmance of the ALJ's decision at step two of the disability analysis.


Plaintiff also asserts that Magistrate Judge Theiler "improperly deferred to the ALJ's determination regarding Ms. Guiliano's credibility." Plaintiff's Objections at 2. However, as Defendant correctly notes, "Beyond this bare assertion, Plaintiff has not supported this claim with any argument." Defendant's Response at 5.

It is therefore ORDERED:

- (1) The Court adopts the Report and Recommendation;
- (2) The Court AFFIRMS the decision of the Commissioner; and

01 (3) The Clerk shall direct copies of this Order to all counsel and to Judge Theiler.

02 DATED this 20<sup>th</sup> day of October, 2009.

03 

04 Carolyn R. Dimmick  
05 United States District Judge  
06  
07  
08  
09  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22